Long Island Jewish Hillside Medical Center *and* League of Registered Nurses, District 1199, National Union or Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL-CIO. Case 29-CA-9627

April 16, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on April 6, 1982, by the League of Registered Nurses, District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL-CIO, herein called the Union, and duly served on Long Island Jewish Hillside Medical Center, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 29, issued a complaint on April 6, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on October 15, 1981, following a Board election in Case 29-RC-5470, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about October 19, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On April 7, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On April 12, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Both Respondent and the Union have waived the issuance by the Board of an Order To Show Cause in this proceeding.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits its refusal to bargain but denies that it thereby violated Section 8(a)(5) and (1) of the Act. Respondent's answer to the complaint contends instead that the bargaining unit described in the complaint is not appropriate for purposes of collective bargaining within the meaning of the Act. Counsel for the General Counsel argues that such a contention is without merit inasmuch as it raises an issue which was presented to and decided by the Board in the underlying representation case. We agree.

A review of the record herein, including the record in Case 29-RC-5470, shows the following: On June 30, 1981, the Union filed a petition in Case 29-RC-5470 to represent certain employees of Respondent. After a hearing, the Regional Director issued a Decision and Direction of Election, in which he found that the following employees constituted an appropriate unit:

> All full-time and regular part-time registered nurses, including staff nurses, nurse practitioners, assistant nursing care coordinators, and per diem staff nurses employed by the Respondent at its Manhasset division, excluding all other employees, clinical nurse specialists, guards, and supervisors as defined in the Act, including the director of nursing, associate director of nursing, assistant directors of nursing and nursing care coordinators.

On September 21, 1981, Respondent filed a request for review of the Regional Director's decision, contending, *inter alia*, that the Regional Director erred by finding appropriate a registered nurses unit limited to a single division. On October 1, 1981, the Board denied Respondent's request for review.

On October 1, 1981, an election by secret ballot was conducted under the direction and supervision of the Regional Director for Region 1 among the employees in the unit found appropriate. The tally was 41 votes for the Union, 3 votes for the Intervenor (New York State Nurses Association), and 32 votes against the participating labor organizations. There were no challenged ballots, and no objections were filed to the conduct of the election. Thereafter, on October 15, 1981, the Regional Director issued a Certification of Representative, cer-

[1] Official notice is taken of the record in the representation proceeding, Case 29-RC-5470, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

tifying the Union as the exclusive representative of the following appropriate unit:

> INCLUDED: All full-time and regular part-time registered nurses, including staff nurses, nurse practitioners, assistant nursing care coordinators, and per diem staff nurses employed by the Employer at its Manhasset division.
>
> EXCLUDED: All other employees, clinical nurse specialists, guards, and supervisors as defined in the Act, including the director of nursing, associate director of nursing, assistant directors of nursing and nursing care coordinators.

Subsequently, on or about October 19, 1981, the Union requested that Respondent meet and negotiate with the Union with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of the employees in the unit found appropriate. Since that date, and continuing to the present, Respondent has refused, and continues to refuse, to recognize the Union and to bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit found appropriate.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) and (1) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2] All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, this proceeding is transferred to the Board and we grant counsel for the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a New York corporation, maintains its principal office and place of business at 270–05 76th Avenue, New Hyde Park, New York, and is engaged both in New Hyde Park and in Manhasset, New York, in the operation of hospitals. During the past 12 months, Respondent has received gross revenues in excess of $250,000 and has made purchases of food, drugs, and medical and other supplies valued in excess of $50,000 directly from points outside the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

League of Registered Nurses, District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time registered nurses, including staff nurses, nurse practitioners, assistant nursing care coordinators, and per diem staff nurses employed by the Respondent at its Manhasset division, excluding all other employees, clinical nurse specialists, guards, and supervisors as defined in the Act, including the director of nursing, associate director of nursing, assistant directors of nursing and nursing care coordinators.

2. The certification

On October 1, 1981, a majority of the employees in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 29, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on October 15, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

[2] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 19, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit.

Commencing on or about October 19, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since October 19, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Long Island Jewish Hillside Medical Center is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. League of Registered Nurses, District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time registered nurses, including staff nurses, nurse practitioners, assistant nursing care coordinators, and per diem staff nurses employed by the Respondent at its Manhasset division, excluding all other employees, clinical nurse specialists, guards, and supervisors as defined in the Act, including the director of nursing, associate director of nursing, assistant directors of nursing and nursing care coordinators, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since October 15, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 19, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Long Island Jewish Hillside Medical Center, Manhasset, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with the League of Registered Nurses, District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time registered nurses, including staff nurses, nurse practitioners, assistant nursing care coordinators, and per diem staff nurses employed by the Respondent at its Manhasset division, excluding all other employees, clinical nurse specialists, guards, and supervisors as defined in the Act, including the director of nursing, associate director of nursing, assistant directors of nursing and nursing care coordinators.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Manhasset, New York, location copies of the attached notice marked "Appendix."[3] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[3] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with League of Registered Nurses, District 1199, National Union of Hospital and Health Care Employees, Retail, Wholesale and Department Store Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time registered nurses, including staff nurses, nurse practitioners, assistant nursing care coordinators, and per diem staff nurses employed by the Respondent at its Manhasset division, excluding all other employees, clinical nurse specialists, guards, and supervisors as defined in the Act, including the director of nursing, associate director of nursing, assistant directors of nursing and nursing care coordinators.

LONG ISLAND JEWISH HILLSIDE MEDICAL CENTER